

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5308 of 1991

For Approval and Signature:

Hon'ble MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
 5. Whether it is to be circulated to the Civil Judge? : NO

MOHANBHAI V VAGHELA

Versus

GUJARAT STATE COOPERATIVE LANDDEVELOPMENT BANK LTD

Appearance:

MR BN PATEL for Petitioner

MR S M Mazgaonkar for Mr SN SHELAT for Respondent No. 1, 2

CORAM : MR.JUSTICE D.P.BUCH

Date of decision: 11/08/2000

ORAL JUDGEMENT

The petitioner above named, has preferred this petition under Articles 14, 16 and 226 of the Constitution of India for appropriate writ, order or direction holding and declaring that the petitioner is

entitled to receive gratuity and all other retirement benefits and arrears of salary for privilege leave computed on the basis that the petitioner has retired on and w.e.f. 20.4.1989 from the first respondent as Peon and the respondents are liable to pay to the petitioner the same with interest at 18% p.a. from the date of retirement i.e. 20.4.1989. The petitioner has also prayed for appropriate writ, order or direction for quashing and setting aside the order dated 14.9.1990 passed by the respondents as per Annexure 'A' being illegal, null and void. The petitioner above named was employed in the services of the first respondent in Class IV as a peon. As per the document submitted by him to the first respondent, his date of birth was shown as 15.7.1931. The petitioner claims that the first respondent obtained another certificate showing the petitioner's date of birth to be 4.7.1924. That the said certificate was obtained by the respondent behind his back and no enquiry was held and no opportunity was given to the petitioner with respect to the said certificate. That when the petitioner went to resume duty at Jafrabad branch after enjoying three days' leave, the agent of the said branch did not allow him to resume duty as peon with the endorsement in the application of the petitioner that the petitioner had retired from the Bank on 20.4.1989 by order dated 17.4.1989. A copy of the said endorsement letter has been placed at Annexure 'A' to the petition. The petitioner claims that by the aforesaid order dated 17.4.1989, the petitioner has been retired by the respondent bank by order dated 17.4.1989. The petitioner has received order from the bank which has been annexed at Annexure 'B'. Then the petitioner filed a Special Civil Application No.3090/89 challenging the said decision of the respondent Bank retiring him from service by order at Annexure 'B' on the ground that the birth date is really 15.7.1934 and the petitioner cannot be retired before 14.7.1992. That the said petition came to be dismissed by this court and LPA No.200/89 preferred by the petitioner before this court was also dismissed by this court. The petitioner then claim that the second respondent, by letter dated 24.7.1989 informed the petitioner that the amount of gratuity scheme payable to the petitioner is Rs.12,186.75 only computed on the basis that the petitioner should have retired on 3.7.1982. That the salary as on that date was considered for the computation of gratuity of total service of 26 years and 5 months. Copy of the said letter dated 24.7.1989 of the second respondent has been placed at Annexure 'D'. The petitioner claims that since he has been retired on 17.4.1989, he was entitled to benefits of arrears of salary computing on the basis that the petitioner had

retired w.e.f. 20.4.1989. The petitioner also claims that the respondents are not entitled to claim anything from the petitioner on the strength of order dated 14.9.1990. Therefore, the petitioner has approached this court challenging the aforesaid decision of the respondent against the petitioner.

2. At the admission stage, notice was issued on the respondents. Thereafter, rule was issued and interim relief was granted. The respondents have filed affidavit-in-reply at page 22. There the respondents have contended that the petitioner ought to have been superannuated w.e.f. 3.7.1982 when he completed 58 years. That in the application for appointment, the petitioner had shown his age to be 30 years and having passed 5th standard. That he had, in the past, served elsewhere for 7 years. The respondent bank, time and again, inquired from the petitioner the correct date of birth so as to fix the date of retirement. That the petitioner did not furnish the said information. The petitioner was requested by writing letters dated 22.5.1980, 28.3.1985, 22.7.1988, 27.9.1989 and 29.9.1988 and he was instructed to furnish details of his birth date. That, in reply to that the petitioner stated on 22.7.1985 that he was illiterate. Subsequently the petitioner disowned that the aforesaid letters were received by him. Ultimately the petitioner was superannuated on 20.4.1989 and therefore, he was not entitled to continue in service from 4.7.1982 to 17.4.1989. That his service between the aforesaid period was not justified in law and he could not be continued in service beyond 3.7.1982. That the petitioner, therefore, cannot claim any salary for the aforesaid period and he is not entitled to any retirement benefit for the work done by him during the aforesaid period. That therefore, the petitioner has no case in this matter and hence this petition be dismissed with costs.

3. I have heard Mr B N Patel, learned Advocate for the petitioner and Mr S M Mazgaonkar for Mr S N Shelat for the respondent and have also perused the papers. It is undisputed that the petitioner was employed as peon in the employment of the respondent bank. It is also not much in dispute that the date of birth was shown to be 15.7.1931. It is also an admitted position that he was requested time and again by the respondent to furnish materials and evidence to show the correct date of his birth. This was not complied with by the petitioner. In the meantime, the respondents made enquiry and obtained certificate showing his birth date as 4.7.1924. Admittedly, the age of superannuation was 58 and

therefore, if this date is his correct birth date, then the petitioner was required to retire w.e.f. 3.7.1982. It is also an admitted position that the petitioner has challenged the decision of the respondent bank retiring the petitioner from service on the strength of the aforesaid date of birth. The said Special Civil Application No.3090/89 has been dismissed and the LPA has also been dismissed. So the position is very clear that the petitioner's contention that the aforesaid birth date i.e. 4.7.1924 is incorrect, is not tenable and it has been turned down twice by this court. In other words, the contention of the respondent is that the correct date of birth of the petitioner as 4.7.1924 has been upheld by this court twice. This shows that the correct birth date of the petitioner is 4.7.1924 and hence on completion of 58 years of age, he was required to retire w.e.f. 3.7.1982. There cannot be any serious dispute about this position at present.

4. Learned Advocate for the petitioner has argued at length that the petitioner has been made to retire on 20.4.1989 and therefore, he should be paid all benefits which will be available to the petitioner as the petitioner really retired on 20.4.1989. It is his case that the petitioner has rendered service and actually put in work with the respondent bank till that date. It is not much in dispute that the petitioner rendered service upto that date. It is also not in dispute that the petitioner was made to retire from service on that date. However, the position is little different. The petitioner has not been made to retire with effect from that date. The only thing is that the fact was brought to the notice of the respondent bank late. Therefore, the respondent passed order late about the retirement of the petitioner. In fact no formal order would be necessary for the retirement of the employee. Rule 16 (1) of the Staff Rules of the respondent bank as indicated in the office order dated 17.11.1989 produced at page 11 with the petition by the petitioner speaks that an employee would retire on completion of the age of superannuation. It is an admitted position that the age of superannuation is 58 years. Therefore, when any employee or officer would complete 58 years of age, he would automatically retire without any formal order of retirement. In the present case, the petitioner has given incorrect date of his birth i.e. 15.7.1931 and, therefore, he could not be retired early. Learned Advocate for the respondent has cited couple of decisions to show that the employee would be entitled to retirement benefits only on the strength of his correct birth date and if the correct date of birth of the petitioner is

4.7.1924, then he would get the retirement benefits only on the strength of that date. This would mean that he would be deemed to have retired on 3.7.1982. Consequently the retirement benefits have to be considered and computed as if the petitioner has retired on 3.7.1982. Learned Advocate for the respondent has relied us on a decision in the case of Radha Kishun v. Union of India & Ors., reported in JT 1997 (4) SC 116. There the petitioner remained in service for three years without any order of re-employment or extension. The petitioner raised a plea for payment of salary and perks for this period of unauthorised working. It was held that there was no right to claim salary and no illegality in rejecting his request is said to have been committed. It was further observed that it was absolute irresponsibility on the part of the establishment officer to allow him to continue. Even appropriate disciplinary action has been directed against all concerned for dereliction of duty. The original petitioner who was appellant in the aforesaid matter was required to retire on attaining the age of superannuation on 31.5.1991, instead he remained in service till 31.5.1994 and he claimed several benefits for the said period of 3 years. The Supreme Court directed that he was not entitled to any benefit even if he remained in service because of the fault on the part of the Establishment Officer.

4.1. Another decision relied on by the learned Advocate for the respondent is in the case of State of Uttar Pradesh v. Dr. Ramesh Prasad, reported in JT 1996 (2) SC 393. There it has been observed that if the respondent remained in service after he attained 58 years of age, by virtue of the order of the court, he must have deemed to have retired on his completing the age of 58 years with resultant consequences. This would mean that even if the respondent remained in service for a longer period, he would not be entitled to any benefit for the period beyond the completion of 58 years of his service, even though the respondent remained in service on account of the order of the Court. The basic reason would be that the Court's order cannot put any party to any damage.

5. It is, therefore, clear that an employee has to retire from the employment as per the date of his birth date which may be found on record. Even if there is some mistake committed by the officers of the employer, it would not be helpful to the employee and the employee cannot claim more than what he is entitled as per the

record showing his date of birth. In other words, if the employee remains in service for a longer period on account of some mistake committed by the officers or other employees of the employers, then that mistake cannot benefit the employee. Same way, even if a person remains in service on account of some orders of the court, then also if ultimately it is found that the birth date is correctly recorded and the benefits will not be available to such employees in accordance with his claim, but the benefits would be available only in accordance with the records showing his date of birth and retirement. Learned Advocate for the petitioner has submitted that the petitioner has been retired from the service by the respondent w.e.f. 20.4.1989 as per the orders at page 10 and, therefore, the petitioner is entitled to benefits available to him till 20.4.1989. This is not acceptable. The petitioner has not been made to retire w.e.f. 20.4.1989 but the retirement has been effected from that date because till then, nothing had happened and the petitioner never complied with the requirement of the respondent regarding the information showing the correct date of birth as contended in the affidavit of the respondent referred to hereinabove. In other words, the respondent bank, time and again, requested the petitioner to furnish information about the correct date of birth. The petitioner avoided to produce the same. Therefore, the respondent itself made enquiry and found that the correct date of birth was 4.7.1924 and he was required to retire in 1982 but since the materials were not collected in time or they were collected late, he was made to retire in April, 1989. That does not mean that the retirement can be said to have been effected in April, 1989. Moreover, in view of the aforesaid decisions, the petitioner would not be entitled to the benefits on the strength that he actually retired from the employment of the respondent on 20.4.1989. The case of the petitioner is little different from the aforesaid two cases before the Apex Court. In one of the two cases referred to above, there was mistake on the part of the officers of the employer, on account of which the employee served little longer. In another case he was protected by the order of the court and, therefore, the employee was required to render more service than what he was required to render according to the correct date of birth. Here the petitioner himself was the party. He himself did not produce the correct date of birth even when he was required to do so time and again. He has not complied with the requirement of the respondent. It is to be seen that the petitioner had actually said that he was not literate. By saying that he wanted to avoid submission of the birth date certificate from the school.

Considering this conduct on the part of the petitioner, I am of the view that the petitioner cannot claim benefits of retirement as if he retired in April, 1989. In other words, respondents were justified in releasing the benefits available to the petitioner on the strength that he had retired from service in 1982. It has been submitted that there was no dispute about the birth date of the petitioner. There was no question of decision on the point also. In fact, there was some information with the respondent that the petitioner had not stated the correct date of birth and, therefore, enquiry was made from the petitioner. He had not complied with the said requirement and therefore, the respondent himself made enquiry and found that the correct date of birth was not 15.7.1934 but it was 4.7.1924. There is a gap of 7 years. The petitioner was party to the wrong committed in the matter. In that view of the matter, when the petitioner himself was party to it and he did not comply with the requirement, the petitioner cannot claim retirement benefits on the strength that he had retired in April, 1989. As stated above, the respondent has stated in their affidavit that between 1980 and 1988, several efforts were made by writing letters of the petitioner to supply information but the information was not supplied. Therefore, the petitioner was required to remain in service for prolonged period of 7 years. I am of the view that the petitioner has over-stayed in service on account of his own fault and not on account of the fault of somebody else. There was no fault on the part of the department. There was no fault of anyone else. Moreover, it appears from the record that the petitioner did not cooperate in the matter of submission of correct information regarding the correct date of birth. On the contrary, in a letter dated 22.7.1985, the petitioner stated that he was illiterate. It was not only a false statement but was a false statement to his knowledge which was proved by the certificate of the birth date obtained by the respondent from the School where the petitioner had studied. Considering this fact of the petition also this is not a fit case where the petitioner should get retirement benefits as if he had retired in April 1989. The fact remains that the petitioner was required to retire in 1982 as per the correct birth date but the petitioner has challenged the said decision of the respondent which has been turned by this court holding the date of birth of the petitioner was 4.7.1924. There is no dispute that the petitioner was required to retire on completion of 58 years which he had completed in 1982. Therefore, he was not required or entitled to remain in service beyond 3.7.1982. There cannot be any dispute about the same.

6. In view of the aforesaid, I am of the view that the petitioner is not entitled to retirement benefits after 3.7.1982. In this petition the petitioner has prayed for appropriate writ, order or direction that the petitioner is entitled to retirement benefits and arrears of salary, privilege leave etc. on the basis that the petitioner has retired w.e.f. 20.4.1989. This benefit cannot be extended to him in the aforesaid circumstances. Even the second prayer for quashing the order dated 14.9.1990 cannot be allowed in view of the aforesaid decisions. The petitioner is not entitled to any benefit on the strength that he may be deemed to have retired on 20.4.1989 and, therefore, the petition deserves to be dismissed. At the same time it appears that the respondent has served a notice dated 14.9.1990 at page 21 saying that the petitioner had enjoyed leave between 3.7.1982 and 20.4.1989. That he was not entitled to enjoy the said period of leave and, therefore, the respondent will be entitled to recover the amount of leave salary from the petitioner. As per the aforesaid decision of the Supreme Court. The respondent may be entitled to recover the same from the petitioner. However, considering the facts and circumstances of the case and looking to the status of the petitioner, it is hoped that the respondent may not effect the recovery of the leave salary enjoyed by the petitioner during the period between 3.7.1982 and 20.4.1989, since he must have been on leave on the strength of service actually rendered by him. However, in view of the aforesaid decision, it will not be possible for this court to direct that the respondent shall not recover this amount from the petitioner.

7. In the result, the petitioner is not entitled to any retirement benefits, consequently, this petition deserves to be dismissed and is accordingly dismissed. Rule discharged. No order as to costs.

11.8.2000 [D P Buch, J.]
msp.